

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 13, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PENNY JEAN SELLERS,

Plaintiff,

v.

HOME DEPOT PRODUCT
AUTHORITY, LLC, a Foreign Limited
Liability Corporation #604-814-859,

Defendant.

No. 4:22-CV-05133-ACE

ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND

BEFORE THE COURT is Plaintiff's November 21, 2022, motion to remand this matter to the Superior Court of Benton County, Washington. ECF No. 7. Defendant filed a timely response on December 5, 2022, ECF No. 8, and Plaintiff filed a timely reply brief on December 12, 2022, ECF No. 9. For the reasons discussed below, the Court **GRANTS** the motion to remand but **DENIES** the request for an award of attorney's fees and costs.

LEGAL STANDARD

A motion to remand requires the Court to inquire whether it has subject matter jurisdiction over a case. *See* 28 U.S.C. §§ 1441, 1447. The two most common forms of jurisdiction are federal question and diversity jurisdiction. *See* 28 U.S.C. §§ 1331-1332. Jurisdiction founded on 28 U.S.C. § 1332 requires that the parties be in complete diversity and the amount in controversy exceed \$75,000. Where it is not facially evident from the complaint that more than \$75,000 is in controversy, the removing party must prove, by a preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold. *Sanchez v.*

1 *Monumental Life Ins. Co.*, 102 F.3d 398, 403 (9th Cir. 1996) (citing *Gaus v. Miles*,
 2 *Inc.*, 980 F.2d 564, 566-567 (9th Cir. 1992) and quoting *McNutt v. General Motors*
 3 *Acceptance Corp.*, 298 U.S. 178, 189 (1936)); *see also Rodriguez v. AT&T*
 4 *Mobility Servs. LLC*, 728 F.3d 975, 978 (9th Cir. 2013). However, where doubt
 5 regarding the right to removal exists, a case should be remanded to the state court.
 6 *Gaus*, 980 F.2d at 566; *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1199 (9th
 7 Cir. 2015) (finding “if the evidence submitted by both sides is balanced, in
 8 equipoise, the scales tip against federal-court jurisdiction”); *Matheson v.*
 9 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“Where doubt
 10 regarding the right to removal exists, a case should be remanded to state court.”).

11 DISCUSSION

12 A. Remand

13 Under 28 U.S.C. § 1332, diversity jurisdiction exists where no plaintiff and
 14 defendant are citizens of the same state and the amount in controversy exceeds
 15 \$75,000. 28 U.S.C. § 1332(a). Plaintiff does not challenge diversity of
 16 citizenship; therefore, the only matter at issue is whether Plaintiff’s claim exceeds
 17 \$75,000. Defendant, as the removing party, has the burden of proving, by a
 18 preponderance of the evidence, that the amount in controversy exceeds \$75,000.
 19 *Sanchez*, 102 F.3d at 404 (observing that the “defendant must provide evidence
 20 establishing that it is ‘more likely than not’ that the amount in controversy exceeds
 21 that amount”).

22 Since, pursuant to Wash. Rev. Code § 4.28.360,¹ the complaint in this case
 23 does not set forth an amount of damages, Defendant had to estimate the value of
 24 Plaintiff’s alleged damages. ECF No. 8. Although Defendant agrees the better
 25

26 ¹“In any civil action for personal injuries, the complaint shall not contain a
 27 statement of the damages sought but shall contain a prayer for damages as shall be
 28 determined.” Wash. Rev. Code § 4.28.360.

1 practice for a removing defendant to carry the burden of jurisdictional amount is to
2 submit an affidavit or other documentary evidence, *see Valdez v. Allstate Ins. Co.*,
3 372 F.3d 1115, 1117 (9th Cir. 2004), Defendant avers the complaint contains
4 sufficient information to support a finding that the amount in controversy is over
5 \$75,000. ECF No. 8 at 4. Specifically, Defendant cites the “Harm & Loss”
6 asserted in the complaint (severe and lasting bodily injuries; pain suffering,
7 inconvenience, mental anguish, disability or disfigurement incurred by the party,
8 emotion distress, loss of society and companionship, injury to reputation and
9 humiliation; medical bills for treatment; and lost earnings, wages, and/or
10 diminished earning capacity) and asserts a reasonable person would conclude that,
11 based upon these allegations, damages exceed \$75,000. ECF No. 8 at 6-7 citing
12 ECF No. 1-1 at 5-6.

13 However, Defendant has not provided a specific dollar figure, calculation of
14 the alleged damages, or any factual evidence to demonstrate the value of Plaintiff’s
15 case. While the preponderance standard does not require a defendant to prove a
16 plaintiff’s damages, the Court “cannot base [its] jurisdiction on a defendant’s
17 speculation and conjecture.” *Lowdermilk v. United States Bank Nat’l Ass’n*, 479
18 F.3d 994, 1002 (9th Cir. 2007), overruled on other grounds, *Rodriguez*, 728 F.3d at
19 976-977. Defendant has failed to set forth any specific factual allegations to
20 support the assertion that the amount in controversy exceeds \$75,000. *See e.g.*
21 *Jauregui v. Nationstar Mortgage LLC*, 2015 WL 2154148 at *5 (C.D. Cal. 2015)
22 (finding general statements cannot establish that the jurisdictional threshold of
23 \$75,000 is met by a preponderance of the evidence).

24 Instead, Defendant argues the amount in controversy requirement has been
25 deemed satisfied in analogous cases. ECF No. 8 at 4-7. “The Court cannot
26 consider awards issued in other actions unless Defendants point to specific
27 commonalities which raise an inference that a similar award is possible in this
28 case.” *Singh v. Glenmark Phargenerics, Inc.*, 2014 WL 4231364 at *4 (D. Nev.

2014) citing *Burk v. Med. Sav. Ins. Co.*, 348 F.Supp.2d 1063, 1069 (D. Ariz. 2004);
Conrad Associates v. Hartford Acc. & Indem. Co., 994 F.Supp. 1196, 1201 (N.D.
Cal. 1998). The Court has considered the parties' arguments and finds that the
facts of Defendant's cited cases are distinguishable from the facts of the instant
case (i.e., how Plaintiff was injured and/or the extent of Plaintiff's injuries). The
Court finds the cases cited by Defendant are not comparable and thus do not
demonstrate that the jurisdiction amount in instant matter has been met.

Defendant has failed to meet its burden of proving, by a preponderance of
the evidence, that the amount in controversy exceeds \$75,000. Consequently, the
case will be remanded.

B. Attorney's Fees

Plaintiff seeks attorney's fees and costs incurred in obtaining remand. "An
order remanding [a] case may require payment of just costs and any actual
expenses, including attorney's fees, incurred as a result of the removal." 28 U.S.C.
§ 1447(c). However, costs and fees should only be awarded when the removing
party had no "objectively reasonable basis for removal." *Patel v. Del Taco, Inc.*,
446 F.3d 996, 999 (9th Cir. 2006) (internal quotation omitted); *Martin v. Franklin
Capital Corp.*, 546 U.S. 132, 141 (2005) ("[W]hen an objectively reasonable basis
exists, fees should be denied."). The Court finds that removal was neither in bad
faith nor "objectively unreasonable." Moreover, Plaintiff has not shown any
unusual circumstances that would warrant fees and costs in this matter. *See* ECF
No. 7 at 9. Consequently, Plaintiff's request for fees and costs incurred to obtain
this remand is denied.

CONCLUSION

Based on the foregoing, **IT IS HEREBY ORDERED** Plaintiff's Motion to
Remand, **ECF No. 7**, is **GRANTED**. Plaintiff's request for attorney's fees and
costs is **DENIED**.

///

1 **IT IS SO ORDERED.** The District Court Executive shall **REMAND** this
2 case to the Superior Court of Benton County, Washington, and **CLOSE THE**
3 **FILE.**

4 DATED December 13, 2022.



Alexander C. Ekstrom

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE